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AUG 27 2004

OFFICE OF PETITIONS

In re Application of	:	
Kenneth Craig Barker	:	
Application No. 10/608,977	:	ON PETITION
Filed: June 28, 2003	:	
Attorney Docket No. N/A	:	

This is a decision on papers filed on July 30, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of June 28, 2003, including page 36 of the specification.

The application was submitted on June 28, 2003. However, on July 19, 2004, the Office of Initial Patent Examination (OIPE) mailed a "Notice Of Omitted Item(s) In A Nonprovisional Application" (Notice) that stated the application had been accorded a filing date, and that page 36 of the specification appears to have been omitted.

In response, on July 30, 2004, the instant petition and a copy of page 36 of the specification were submitted. Petitioner states, "Since the above application, including all pages except the drawings, is a contiguous computer file, I feel some confidence that page 36 was printed and included in the material sent to the USPTO."

The argument has been considered, but is not persuasive. The Patent and Trademark Office (Office) file is the official record of the papers originally filed in this application. A review of the official file reveals thirty-seven (37) pages of specification, claims and abstract were filed on June 28, 2003. Page 36 of the specification was not filed on June 28, 2003, since no such page is present in the file. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

The Office has a well established and well publicized practice of providing a receipt for papers filed in the Office to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the Office with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503.

Petitioner has not submitted any such post card receipt that indicates receipt of the missing page on June 28, 2003.

Petitioner also states, "Page 36 can be considered a nonessential filler item between the claims portion of this application and the sources cited portion. If it is missing from the rest of the application I request that you consider this a preliminary amendment submitted prior to the first Office action, asking that you kindly renumber the pages consecutively to eliminate page 36."

If petitioner wishes the Office to accept the application as filed on June 28, 2003, without page 36 of the specification, petitioner should specifically state as such. Furthermore, if petitioner chooses this course of action, petitioner should file a separate preliminary amendment that makes any necessary changes due to this course of action with any petition for reconsideration of the instant decision that petitioner may file.

If petitioner wishes to accept the filing date of the application as that of the date of submission of the omitted item, petitioner should clearly state as such and supply a supplemental oath or declaration that refers to the omitted item.

Accordingly, at the present time, the petition must be dismissed. However, this decision is made without prejudice to reconsideration.

Any request for reconsideration should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely. This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 Box 1450
 Alexandria, VA 22313

By FAX: (703) 872-9306
 Attn: Office of Petitions

By hand: Customer Service Window
 2011 South Clark Place
 Crystal Plaza Two (left side entrance of building)
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Telephone inquiries should be directed to the undersigned at
(703) 306-9200.



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